his tapping. But his wounding increased to such an extent that it could not be tolerated any more. Hence he was dismissed on the 21st September, 1959". The witness for the appellant is perhaps a little clearer on the question whether or not some wounding took place after the final warning. This witness says "in the course of his work he was warned three times for bad tapping. In spite of this he did not improve his tapping. Hence he was dismissed on 22nd September, 1959". I emphasise the words "in spite of".

During the course of the submission I pointed out that it was unfortunate that the appellant had not given dates and details in particular rather than in general terms. Counsel for the appellant thereupon made application to me to hear additional evidence on this aspect. There being no objection by the respondent, I granted Counsel leave to call additional evidence. Accordingly the appellant was called to give evidence.

In the course of his evidence, in answer to a question put to him by me as to why he did not give the full details to the Labour Officer, he stated that the Labour Officer had confined him to answering questions and that he had had no opportunity such as he had in this Court. If that be so, then it should be pointed out to officers hearing these cases that parties appearing before them are entitled to state their case in detail and should not be confined to the answering of questions put to them by either the opposing party or the presiding officer.

The evidence recorded before me establishes clearly that the conduct of the respondent was treated seriously by the management from a point of time about August last year when his work was closely checked. As a result of a checking on or about the 25th August the respondent was called to the office and was warned. There was another inspection on the 19th September when more than 100 trees were found by the appellant himself to have been wounded. Again on the 21st September on another inspection it was discovered that about the same number of trees had been wounded.

This appeal before me is not so much as to whose evidence is to be accepted, because to a limited extent there is an admission in cross-examination by the respondent of the wounding of trees but he says that the wounding was unavoidable and he does not know the numbers.

On the whole of the evidence on the record and the evidence taken before me, I am satisfied that the decision of the Labour Officer was wrong, that the appellant has established misconduct on the part of the respondent, and that that misconduct consisted in wounding a large number of trees over a comparatively long period of time. Although the continued employment by the appellant of the respondent after the knowledge of the misconduct, that is to say wounding of the trees, amounted to condonation, in my opinion there was clear evidence of fresh misconduct subsequent to the last warning which not only in itself constituted grounds for instant dismissal but revived, according to the principles of law, the misconduct which had been condoned.

For these reasons I grant the appeal to the extent of setting aside that part of the order which orders the appellant to pay to the respondent the sum of $90 by way of indemnity in lieu of notice, on the ground that the appellant was entitled in law on the 21st September, 1959, to dismiss the respondent without notice by reason of his misconduct.

No order as to costs.

Appeal allowed in part.

Solicitors: *Ong Swee Keng & Co.*

PUBLIC PROSECUTOR v. CHIAM LIANG KEE

[A. Cr. J. (Rigby J.) April 8, 1960]

[Penang — Criminal Appeal No. 8 of 1960]

Road Traffic — Dangerous driving — Disqualification — Discretion — Road Traffic Ordinance, 1958, s.35(3).

Criminal Law and Procedure — Appellate Court — Powers of — Criminal Procedure Code (Cap. 21), s.316.

This was an appeal against the inadequacy of the sentence imposed on the respondent on a conviction on the charge of dangerous driving. The respondent was driving a motor lorry following behind another lorry. In an attempt to overtake, and when his lorry drew level with the other, his lorry smashed into two cyclists who were cycling on their correct side of the road in single file from the opposite direction. Both cyclists suffered very severe injuries and were killed instantaneously. He was sentenced to three months' imprisonment and a fine of $300 or one month's imprisonment in default of payment of such fine. The particulars of the conviction were ordered to be endorsed upon his driving licence.

Held: the failure to impose any disqualification was not a proper or satisfactory exercise of discretion vested in the President under section 35(3) of the Road Traffic Ordinance, 1958. In the circumstances of the case, the respondent must be disqualified from holding or obtaining a driving licence for a period of three years from the date of his conviction.

Per curiam: the powers of an appellate Court, on an appeal from a subordinate Court, are contained in section 316 of the Criminal Procedure Code, and they include a power vested in the appellate Court to interfere with and, if necessary, alter, the exercise, or failure to exercise, of any discretionary power vested in the lower Court. The appellate Court is placed in the same position as the trial Court.

Observations of the Lord Chancellor referring to the increasing number of road casualties quoted.

MAGISTRATE'S CRIMINAL APPEAL.

L. A. Massie (Deputy Public Prosecutor) for the appellant.

Lim Cheng Ean for the respondent.

Rigby J. (delivering oral judgment): This is an appeal by the Deputy Public Prosecutor on the ground that the sentence imposed in this case was inadequate. The respondent was convicted on the charge preferred against him of dangerous driving, and sentenced to three months' imprisonment and a fine of $300, or one month's imprisonment in default of payment of such fine. The learned President further ordered, as, indeed, he was bound to do upon a

conviction under section 35 of the Road Traffic Ordinance, 1958, that the particulars of the conviction should be endorsed upon the respondent's driving licence.

The facts of the case were just about as bad as they could be. It was, in my view, a perfectly appalling case of dangerous driving, to describe the offence at its very lowest. It is sufficient to quote from the facts found by the learned President in his grounds of decision. The facts were that the accused, a young man, aged 24, was driving a motor lorry along Lahar Yooi/Jarak Main Road towards Ara Kudah, Province Wellesley. The accused's lorry was following behind another lorry. At about the 11th mile Jarak Road the accused attempted to overtake the lorry in front. As the accused's lorry drew level with the other lorry and was about to overtake it the accused's lorry smashed into two Malay cyclists who were cycling on their correct side of the road in single file from the opposite direction. The two cyclists were thrown into the ditch on their side of the road. Both of them suffered very severe injuries and were killed instantaneously. Photographs were produced in evidence at the trial, and they show the appalling injuries that were sustained by the two unfortunate cyclists. The facts show quite clearly that the respondent attempted to overtake another lorry and in doing so literally ploughed into the two cyclists coming from the opposite direction and riding in single file. It would be difficult to find a worse case of dangerous driving. The sentence, in my view, on those facts, was a lenient one. But I do not propose to interfere with it. I am, however, very much more concerned with the omission of the learned President, in what he considered to be a proper exercise of his discretion, not to impose a period of disqualification in respect of the respondent's driving licence. Section 35(3) of the Road Traffic Ordinance, which the learned President has cited in his grounds of decision, is perfectly clear. It provides that:—

> "On a second or subsequent conviction under this section the Court shall exercise the power conferred by this Part of this Ordinance of ordering that the offender sha'l be disqualified for holding or obtaining a driving licence unless the Court, having regard to the lapse of time since the date of the previous or last previous conviction or for any other reason (which reason shall be stated in the order). thinks fit to order otherwise but this provision shall not be construed as affecting the right of the Court to exercise the power aforesaid on a first conviction".

The learned President, therefore, held, perfectly properly, that it was a matter for his discretion as to whether or not he should impose a period of disqualification on the respondent in respect of this conviction, which was, of course, the respondent's first conviction for an offence of this nature. The learned President then stated:—

> "I think the sentence I have imposed is quite adequate and in exercising my discretion I declined to impose a disqualification".

The learned President has not stated in his grounds of decision the reasons why in this particular case, he has not thought fit to impose any disqualification other than to say that the sentence that he imposed was, in his view, adequate. It is, therefore, impossible to find out what other considerations, if any — other than the matter of sentence — influenced him in not imposing a disqualification. With respect to the learned President, in my view, his failure to impose any disqualification in this case was not a proper — or, perhaps, I should say, a satisfactory — exercise of the discretion vested in him. I repeat, on the learned President's own findings of fact, it would be difficult to find a worse case of dangerous driving.

The powers of an appellate Court, on an appeal from a subordinate Court, are contained in Section 316 of the Criminal Procedure Code, and they include a power vested in the appellate Court to enhance the sentence or alter the nature of the sentence. In my view, that includes a power vested in the appellate Court to interfere with and, if necessary, alter, the exercise, or failure to exercise, of any discretionary power vested in the lower Court. The appellate Court is placed in the same position as the trial Court. I repeat, on the facts of this case, in my view, if ever there was a case which required an exemplary period of disqualification this was such a case. I propose, therefore, to direct that the respondent be disqualified from holding or obtaining a driving licence for a period of three years as from the date of his conviction for this offence.

Before concluding this case, I would refer to an address given to Magistrates in England some time ago by the then Lord Chancellor of England in which he said, in referring to the increasing number of road casualties, — and I quote his words — that:—

> "These figures should bring home to us the fact that the motorist is in control of a lethal instrument and should lead Magistrates to consider very carefully whether the penalties which they are in the practice of imposing on motorists who handle that instrument in a way which endangers other people are sufficient to impress on the motorist the seriousness of his offence."

He continued:—

> "In particular, I would remind you that you have a wide discretionary power to disqualify in cases where the statute itself does not make disqualification automatic".

He went on to say:—

> "It has been suggested from time to time in debates both in the House of Lords and in the House of Commons, that this is a power which Magistrates might usefully employ more frequently, since it is disqualification which the motorist fears rather than a fine. Disqualification serves a double purpose, in that it is firstly, the punishment most feared by the motorist and therefore the most effective deterrent, and, secondly, it keeps the careless or dangerous driver off the road for a period and does that practical amount of good".

Those are not my words. They are the words of a Lord Chancellor of England. I venture to commend them to Magistrates for their careful consideration and attention.

The sentence imposed by the learned President is, therefore, varied by the addition of an order disqualifying the respondent from holding or obtaining a driving licence for three years as from the 12th February, 1960, being the day on which he was convicted on this charge.

Sentence varied.